

1 JONATHAN ALLAN KLEIN (SBN 162071)
2 ANNMARIE M. LIERMANN (SBN 215116)
3 KELLY, HOCKEL & KLEIN P.C.
4 44 Montgomery Street, Suite 2500
5 San Francisco, CA 94104-4798
6 Tel.: (415) 951-0535
7 Fax: (415) 391-7808

8 Attorneys for Defendant
9 RITE AID CORPORATION

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 KIMBERLY BEAGLE,
13 Plaintiff,

14 vs.

15 RITE AID CORPORATION; and DOES
16 1 TO 100, INCLUSIVE,
17 Defendants.

Case No.: CV08-1517-PJH

**[PROPOSED] ORDER GRANTING
DEFENDANT RITE AID'S MOTION
TO DISMISS FOR LACK OF
SUBJECT MATTER JURISDICTION
(FRCP 12(b)(1))**

Date: Wednesday, June 4, 2008
Time: 9:00 a.m.
Dept.: Courtroom 3, 17th Floor

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19 On June 4, 2008, the motion of Defendant Rite Aid Corporation ("Rite
20 Aid") to dismiss the disability harassment cause of action (the Second Cause of
21 Action) in the complaint filed by Plaintiff Kimberly Beagle ("Plaintiff") came on
22 regularly for hearing before the Honorable Phyllis A. Hamilton. David D.
23 Cheng, Esq. appeared on behalf of Plaintiff. Annmarie M. Liermann, Esq. of
24 Kelly, Hockel & Klein, P.C. appeared on behalf of Defendant.

25 The Court having considered the papers filed in support of and in
26 opposition to the motion, the arguments of counsel at the hearing on the
27 motion, and the pleadings on file in this action, and GOOD CAUSE APPEARING
28 THEREFOR, makes the following order:

1 Defendant's motion to dismiss Plaintiff's disability harassment claim (the
2 Second Cause of Action) is hereby GRANTED. The Court lacks jurisdiction over
3 the disability harassment cause of action because Plaintiff failed to exhaust her
4 administrative remedies as to that claim.

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6 IT IS SO ORDERED.

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9 DATED:

10 Judge Phyllis A. Hamilton
11 Judge of the United States District Court,
12 Northern District of California
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PROOF OF SERVICE

Kimberly Beagle v. Rite Aid Corporation, and DOES 1 to 100, inclusive
USDC Northern District Case No.: CV08-1517-PJH

I, MARIA E. JAIME, declare:

I am employed in the City and County of San Francisco, State of California. My business address is 44 Montgomery Street, Suite 2500, San Francisco, California 94104. I am over the age of 18 years and not a party to the foregoing action.

On *April 24, 2008*, I served the following Document: ***[PROPOSED] ORDER GRANTING MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION (FRCP 12(b)(1)*** on the interested parties in said action,

Mark S. Adams, Esq. David D. Cheng, Esq. Mayall, Hurley, Knutsen, Smith & Green 2453 Grand Canal Blvd., Second floor Stockton, CA 95207-8253 <i>Attorneys for Plaintiff</i>	(209) 477-3833
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X (by mail) by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth above. At Kelly, Herlihy & Klein LLP, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the City of San Francisco, California.

_____ (by personal delivery) by having a true copy thereof personally delivered to the person listed above by a non-interested party employed by the law firm of Kelly, Herlihy & Klein LLP.

_____ (by Federal Express) by depositing a true copy thereof in a sealed packet for overnight delivery, with charges thereon fully prepaid, in a Federal Express collection box, at San Francisco, California, and addressed as set forth above.

_____ (by facsimile transmission as indicated above) by transmitting said document(s) from our office facsimile machine (415) 391-7808, to facsimile machine number(s) shown above. Following transmission, I received a "Transmission Report" from our fax machine indicating that the transmission had been transmitted without error.

I declare under penalty of perjury and the laws of the United States that the foregoing is true and correct and that this declaration was executed on *April 24, 2008* at San Francisco, California.


MARIA E. JAIME